SINGLE BENCH

Rs. 100/- 23.1.05

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.NO. 2400 / 2005

Petitioner : Naindas Satnami
S/o Anjoradas Satnami,
Aged about 36 years,
R/o Village Goindra Janpad Panchayat Patharia, Distt. Bilaspur (C.G.)

Versus

Respondents :

1. Kanhaiyalal S/o Chowaram, aged about 33 years, R/o Village Goindra Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

2. Kashiram S/o Shri Samaruram, aged about 35 years, R/o Village Goindra Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

3. Guniram S/o Unknown, aged about 50 years, R/o village Tengnagarh, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

4. Chiranjeevlal S/o Jagatram, aged about 35 years, R/o Village Goindra, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

5. Tulsiram S/o Shri Jagatram, aged about 55 years, R/o Village Goindra, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

6. Surendra Kimar S/o Shri Mohan Lal, aged about 36 years, R/o Village Goindra, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

7. Suresh Kumar S/o Shri Anup, aged about 25 years, R/o Village Tengagarh, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

RE-COPY 13.5.05

8. Shrawan Manik Puri S/o Shri Purandas, aged about 25 years, R/o Village Goindra, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

9. Returning Officer,
S.K. Goutam,
Additional Tahsildar Patharia, Distt. Bilaspur (C.G.).

10. Mohanram S/o Unkonwn, aged about 28 years, R/o Village Tengnagarh, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

11. Dwarika Prasad S/o Rewaram, aged about 36 years, R/o Village Gonidra, Janpad Panchayat Patharia, Distt. Bilaspur (C.G.).

12. Sub Divisional Officer Mungeli, Distt. Bilaspur (C.G.).

WRIT PETITION U/A 226 / 227 OF THE CONSTITUTION OF INDIA

1. Particulars of the Petitioner.

As per cause title.

2. Particulars of the Respondents.

As per cause title.

3. Particulars of the order against which the petition is being filed :

1. Order dated : 22.02.2005
2. Passed by : Sub Divisional Officer, Mungeli, Distt. Bilaspur (C.G.).

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..W.P.2400/... **सन्** 2005

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

4-8-2006

Mr. Kunal Das, counsel for the petitioner.

Mr. G.K. Beriwal, Deputy Advocate General for the State/ respondent No.12.

Heard on I.A.No.6823/2006, application for amendment in the writ petition.

I.A.No.6823/2006 is allowed. Amended petition has already been filed, that is taken on record.

Also heard learned counsel for the parties, on admission.

By the instant writ petition under Article 226/227 of the Constitution of India, the petitioner has challenged the legality, validity and correctness of the order dated 22nd February, 2005, passed by the Sub Divisional Officer, Mungeli, District: Bilaspur, whereby learned Sub Divisional Officer rejected the election petition filed by the petitioner herein.

Brief facts leading to filing of this writ petition are that the petitioner contested for the post of Sarpanch of Gram Panchayat: Goindra. The election was held on 23rd January, 2005 and as per the petitioner's case, during the course of counting the Election Officer informed the petitioner that he has won the election for the post of Sarpanch by a margin of one vote on which the petitioner asked for the certificate to that effect, but the Election Officer asked him to wait for some time. After some time, the Election Officer declared that respondent No.1 Kanhaiya Lal and the petitioner have obtained equal votes against which the petitioner gave written objection to the Returning Officer, Patharia. The petitioner also gave an application for recounting of the votes, which was not at all considered by the Returning Officer. On 27-11-2005, by way of lots, respondent No.1 was declared as Sarpanch. The petitioner filed election petition aggrieved by the said decision before the Specified Officer, Mungeli. Learned Specified Officer vide order

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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मामला क्रमांक W.P.2401/ **सन्** 200 5

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 2 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

dated 22-2-2005 dismissed the election petition mentioning in the order that he himself was present on the spot and there was no irregularity in the election process. The said order of the S.D.O. is bad in law as the same is passed without following the procedure envisaged in Rule 11 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995').

Having heard learned counsel for the parties, I have perused the impugned order. It has been mentioned in the order that election for the post of Sarpanch was held at Block Headquarter: Patharia which was conducted by draw of lots, the Specified Officer himself was present on the spot, no body raised any objection against the devising of system of draw of lots, even the petitioner has not moved any objection application, he remained silent till the lots were drawn and when he was defeated in the draw of lots, he raised this objection, therefore, the matter is not fit for any proceedings, same is dismissed.

The order passed by the Specified Officer is ex-facie illegal, perverse and contrary to the Rules, 1995. Therefore, the writ petition is being disposed of at the admission stage itself without issuing notice to the remaining respondents as issuance of notice will not only delay the further proceedings, but it will put unnecessary financial burden on the respondents and issuance of notice is not going to serve any purpose as such the order impugned is liable to be set aside at the threshold. However, if any of the respondents still feel aggrieved, he will be at liberty to file application for recalling of this order and that application will be decided after hearing both the parties.

The impugned order, as mentioned earlier, has been passed in complete violation of the Rules, 1995. Rule 11 (1) of the Rules, 1995 envisages that "*subject to the provisions of these rules, every election petition shall be enquired into by the specified officer as nearly, as may be, in*

P.T.O.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....W.P.2400/ **सन् 2005**

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

according with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits: Provided that it shall only be necessary for the specified officer to make a memorandum of the substance of the evidence of any witness examined by him". Rule 12 of the Rules, 1995 further envisages that "*it shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses*".

Therefore, in order to decide the election petition filed by the petitioner herein the Specified Officer was required to enter into enquiry of the election petition and follow the procedure as envisaged in Rules 11 & 12 of the Rules, 1995 by allowing the parties to file their documents as well as the oral evidence. But, in this case, learned Specified Officer has devised a procedure for disposal of the election petition which was unknown to the Rules, 1995, as such, the order impugned is wholly illegal, same is liable to be set aside and it is hereby set aside. Learned Specified Officer is directed to restore the election petition on its original number and decide the same in accordance with law and the Rules, 1995, after giving notice to all the parties.

With the observation and direction aforesaid, the writ petition stands disposed of, at the admission stage itself.

Consequently, M.(W.)P.No.1936/2005, I.A.Nos.4711/2005 and 1087/2006 also stand disposed of.

Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

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P.T.O.